

ADEQ Responses from September 5, 2013 meeting/teleconference call with U.S. EPA Region 6, U.S. EPA Head-quarters & Mr. Charles Curtis "Curt" Grisham, Jr.

III. Why was my letter May 16, 2012 to John Chamberlin, Chair, Arkansas Pollution Control and Ecology Commission never acknowledged or answered?

ADEQ does not know why the Commission did not respond. When asked about the relationship between and the duties and powers of both the APC&EC and ADEQ, Dara Hall gave the following answer. Per state law Ark Code Ann. § 8-4-201 the Commission is given the duty to promulgate environmental rules and regulations, and to act as a quasi-judicial body to which parties could appeal certain final actions or decisions of ADEQ as allowed by State law. The Commission has no authority to direct ADEQ on its day-to-day operations. ADEQ pursuant to State law, again Ark Code Ann. § 8-4-201, is given the power to enforce and administer all laws and regulations relating to the pollution of any waters of the state.

Curt Grisham then asked who the Commission answered to, and Dara replied the commission answers to no one, they are an independent decision-making body, but their decisions can be appealed to Circuit Court pursuant to State law.

IV. ADEQ & EPA: resolve and unify Arkwood Superfund Site H2O Remedial Goal for pentachlorophenol contamination levels and address following inconsistencies:

B. "Organisms in the effluent discharge stream experience chronic exposure, therefore; the chronic surface standard of 15.57 ug/L is the appropriate standard for the Arkwood Site."

1. Sarah Clem, ADEQ Branch Manager, Water Quality Planning, Water Division, ADEQ to EPA Region 6, letter of February 14, 2012.

C. "According to the e-mail from Jean Mescher, McKesson, dated October 3, 2012 provided with the subject report, samples cannot be obtained 20 feet downstream from the weir as requested by ADEQ during periods of low flow since the effluent 'sinks into the subsurface before reaching the culvert.' This statement describes the effluent returning to a subsurface status and therefore returning to the state of groundwater. For this reason the Maximum Contaminant Level (MCL) for pentachlorophenol (PCP) of 1.0 ug/l should be used in lieu of the aquatic toxicity standard of 15.57 ug/l which is currently used."

1. Mark Moix, Engineer, PE, Technical Branch, Hazardous Waste Division, ADEQ in a certified letter dated November 6, 2012 to Ruben Moya, RPM Superfund, EPA Region 6 (Emphasis added).

When Curt referenced the February 14, 2012 and November 6, 2012 letters to EPA recommending these as applicable screening levels for the site, he questioned the validity of these standards.

Annette Cusher replied that the MCL is the maximum permissible level of contaminant allowed in drinking water. Since the MCL is a federal law it is a legally enforceable standard.

Curtis Grisham asked which standard should apply to the Arkwood site, the surface water quality chronic standard of 15.57 ug/L, or the maximum contaminant level of 1.0 ug/L?

Dianna Kilburn replied that the surface water quality chronic standard and the maximum contaminant level are not mutually exclusive: the first standard applies to surface water (when the water exists as a spring), and the second standard applies to groundwater (before water exits the subsurface or when the surface water returns to a subsurface status). Overall, the final standard(s) agreed to will need to be compliant with state law.

“Sarah Clem replied that on August 16, 2013 Act 954 of 2013 became effective. {At this point Sarah was not able to finish her statement; the following is the rest of her intended reply:} Arkansas Code § 8-4-202(b)(3)(iv)(a) states: “Except as provided in subdivision (b)(3)(B)(iv)(b) of this section, a water quality standard to protect or maintain the use of a domestic water supply may be developed and implemented only for a stream segment, lake, or reservoir that: (1) Has an existing use as a domestic water supply; or (2) Is listed in the Arkansas Water Plan as a planned or potential domestic water supply.” Neither of these requirements apply to New Cricket Spring. Therefore, in our previous conference call the Designated Use of Domestic Water Supply for New Cricket Spring was present however after the effective date of Act 954 of 2013 it has been removed.

Curt Grisham questioned the applicability of the MCL drinking water standard for the Arkwood site.

Dara Hall replied that unless otherwise stated, if groundwater tests below 10,000 parts per million Total Dissolved Solids (TDS), the waters of the state of Arkansas will be considered drinking water.

Curt Grisham questioned again the validity of the MCL standard as law.

Dara Hall referenced a hard copy of the Code of Federal Regulations, turning to the appropriate page and stated that Title 40 CFR Part 141.24 contains the applicable MCL for pentachlorophenol.

In addition, ADEQ will provide the EPA with a written response to McKesson’s comments.

VIII. Arkwood Land Revitalization

Curt Grisham commented that a potential bona-fide prospective purchaser (BFPP), Tyson or Butterball, was interested in the site to use as a feed mill to grind corn that would then be supplied as feed to their poultry houses. He also posed a hypothetical re-use for the property: another wood treatment facility might be possible since the drinking water levels of concern may be relaxed in the future (a reference to the 9/28/2008 Reregistration Eligibility Decision for Pentachlorophenol cited in item IV A. 1. of his meeting agenda).

Dara advised Curt that while ADEQ would not oppose any prospective buyer/reuse of the property but that he might want to explore selling or leasing to an entity that does not treat wood. Dara stated that if he were the attorney for a prospective buyer of the site he would strongly advise his client not to engage in a similar wood treatment activity at the site precisely because it was done in the past. Putting another wood treatment facility on the property would be a litigation nightmare for the facility and subject them to potential liability for any contaminants found on the site in the future. (If the property is re-used this way, how could you ever prove the remaining site contaminants from the previous operation did not come from the new treatment facility?)

Near the end of the conference call, Mark Moix asked Curtis Grisham to please contact him with any ADEQ-related requests in the future. (Mark Moix can be contacted by phone at (501) 682-0852 or by e-mail at moix@adeq.state.ar.us .)